

In the Supreme Court

OF THE

United States

MAR 26 1946

CHARLES ELMORE ORRLEY
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OCTOBER TERM, 1945

No. 1001

ESTATE OF ETHEL M. DUVAL, Deceased, by
Thomas M. Robinson, Jr., and Weston Shat-
tuck Robinson, as Executors of her Last Will
and Testament,

Petitioners,

VS.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.**

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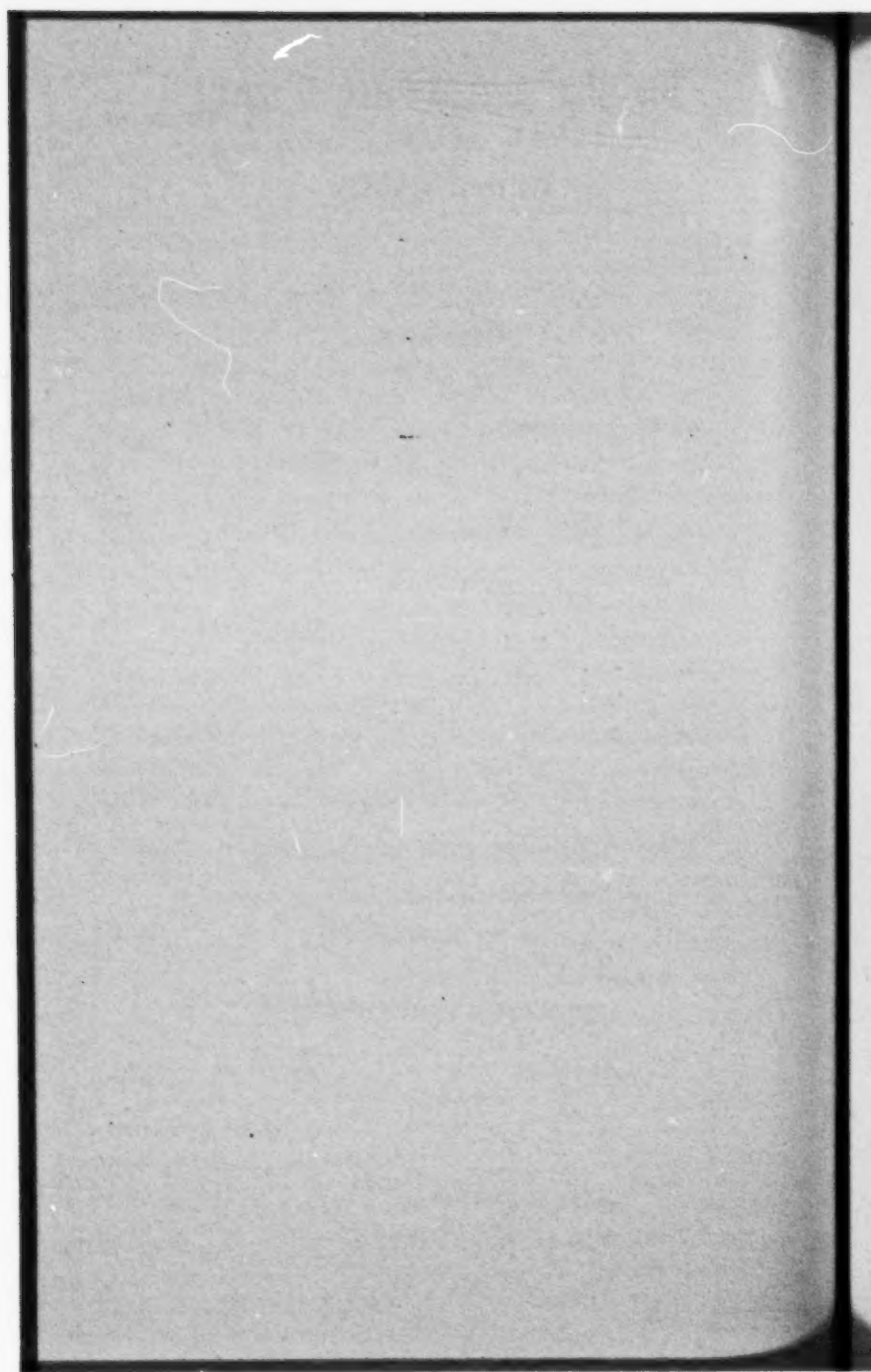
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Thomas M. Robinson, Jr., and Weston Shattuck Robinson, as Executors of her Last Will
and Testament,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

*To the Honorable Harlan Fiske Stone, Chief Justice of
the United States, and to the Honorable Associate
Justices of the Supreme Court of the United States:*

SUMMARY STATEMENT OF THE MATTER INVOLVED.

ETHEL M. DUVAL (hereinafter referred to as the "decedent") died on April 9, 1942. Her executors, Thomas M. Robinson, Jr., and Weston Shattuck Robinson, filed a Federal Estate Tax return on her estate and paid a tax thereon of \$14,302.19. (R. 14, 21.)

A deficiency was assessed on the return in the amount of \$48,214.31, based on the disallowance by the Commissioner of Internal Revenue (hereinafter referred to as the "Commissioner") of a deduction taken by the executors for a claim of the Bank of America, National Trust and Savings Association (hereinafter referred to as the "bank") against the estate in the amount of \$175,000. (R. 12-17.)

The bank's claim was founded on the decedent's absolute and unconditional guaranty, with her sister, Mary J. Robinson (hereinafter referred to as the "co-guarantor") of two notes given to the bank by the M. K. Blake Estate Company (hereinafter referred to as the "corporate maker"). The claim had been allowed by the executors, approved by the Probate Court, and was an acknowledged debt of the estate. In accordance with a plan agreed to in March, 1943, by the executors and the bank, distribution of the estate is to be made to a testamentary trustee, subject to the bank's claim. The claim has not been paid to date. (R. 21-23.)

At the time of decedent's death, the maturity date of the two notes was August 2, 1944. The unpaid balance of the principal of the two notes amounted to \$175,000. No part of this amount has been paid since her death. (R. 23.)

The corporate maker and the co-guarantor were solvent at the time of decedent's death, and have remained so to this time. The co-guarantor is aged, an invalid, and confined to her home. (R. 24, 25.)

The matter involved is the correctness of the disallowance by the Commissioner of the deduction taken by

the executors of the bank's claim for \$175,000 against the decedent's estate on her contract of guaranty.

The Tax Court held that the deduction was properly disallowed on the theory that the claim against the estate had been waived by the bank. The Circuit Court of Appeals recognized the claim and its deductibility, but held that decedent had, at the time of her death, rights of contribution, subrogation and reimbursement or rights to rights of contribution, subrogation and reimbursement (hereinafter called "rights over") against the corporate maker and the co-guarantor of the notes, includable in decedent's gross estate, which were equal in value to the claim, thereby offsetting it in its entirety.

QUESTIONS PRESENTED.

The questions presented here are as follows:

1. Did rights over against the corporate maker and the co-guarantor exist, under the law of the State of California, in favor of the decedent at the time of her death?
2. Does the principle of uniformity of taxation operate to establish such rights over in decedent for federal estate tax purposes when they did not exist under California law?
3. Even assuming that such rights over did so exist, may they be valued as an asset of the decedent's estate in the full amount of the guaranty claim simply because the corporate maker and the co-guarantor are solvent at the time?

4. Is there an "absurdity" in permitting the deduction of the guaranty claim because the estates of numerous co-guarantors might each claim a like deduction, so that petitioner's contentions, although otherwise correct, may not succeed?

**REASONS RELIED ON FOR THE ALLOWANCE
OF THE PETITION.**

Three grounds are relied on as the reasons why this Court should grant the petition for certiorari. They are

1. The Circuit Court of Appeals held that rights over against the corporate maker and the co-guarantor existed, under the law of the State of California, in decedent's favor at the time of her death, and thereby decided an important question of California law directly contrary thereto.

2. The Circuit Court of Appeals failed to give proper effect to the decisions of the United States Supreme Court that state law creates legal interests and rights and the federal revenue acts designate what interests or rights so created shall be taxed, both by holding erroneously that such rights over did so exist and by holding that, even if such rights over did not so exist, the principle of uniformity of taxation operated to establish them for federal estate tax purposes.

3. Even assuming that such rights over did so exist, the Circuit Court of Appeals erred in failing to value them by the formula established in the Internal Revenue Code and the Regulations thereunder. There is a conflict in the decisions as to the method of valuing such rights

over, and the method followed by the Circuit Court of Appeals was not the proper one.

Wherefore, the petitioners respectfully pray that a writ of certiorari issue.

Dated, Oakland, California,
March 18, 1946.

CHARLES A. BEARDSLEY,
Attorney for Petitioners.

FITZGERALD, ABBOTT & BEARDSLEY,
Of Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for petitioners herein and that in my judgment the foregoing petition is well founded and not interposed for delay.

Dated, Oakland, California,
March 18, 1946.

CHARLES A. BEARDSLEY,
Of Counsel for Petitioners.

